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Among the functions of the Commission on Professional Rights and Responsibilities of the NEA is the investigation of cases of alleged unethical conduct by members of the teaching profession. The rules of procedure for investigations presented in this document are intended to assure all parties in a conflict of their individual rights of procedural fair process. Specific procedural guidelines including commission and participant responsibilities are listed for the following major types of investigations conducted by the commission: (1) Class I-Formal Investigation, (2) Class II-Special Studies, and (3) Class III-Staff Inquiry (ethics cases). (JH)

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RULES
of
Procedure For Investigation

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PREFACE

In prolonged controversies, where concerned parties often lose their ability to explore alternatives, to understand and communicate, and to view their own position and that of their adversaries without bias, deadlock or impasse sometimes occurs. In this type of situation, a third party can be useful in mediating or investigating the dispute and suggesting possible remedies. Since the time the National Education Association was chartered by Congress in 1906, the Association has received numerous requests from teachers and from the public that it lend assistance in matters of controversy that are amenable to settlement through the processes of investigation or fact finding.

To help carry out the investigation function, the National Education Association in 1941 organized the National Commission for the Defense of Democracy Through Education. In 1961, the Representative Assembly merged the Commission with the Committee on Tenure and Academic Freedom, to form the national Commission on Professional Rights and Responsibilities. The functions of this Commission are:

1. To defend members of the teaching profession, schools, and the cause of education against unjust attacks; to investigate controversies involving teachers and schools justly, fearlessly, and in the public interest;
2. To encourage the development and use of personnel policies that attract and hold competent professional personnel and prevent unnecessary difficulties;
3. To aid in improvement and extension of state tenure legislation;
4. To protect the rights of members of the teaching profession and foster conditions of academic freedom under which teachers may safely teach the truth without fear or favor;
5. To gather information about the various individuals and groups who criticize or oppose education, and make resumes of their activities;
6. To investigate cases of alleged unethical conduct by members of the teaching profession and report to the Committee on Professional Ethics;
7. To investigate charges and report to the NEA Executive Committee the name of any member who violates the membership requirements as stipulated in Article I, Section 1 of the NEA Bylaws;
8. To issue reports and engage in such other activities as are appropriate to the development of better understanding by the profession and the public of the areas of concern which are the responsibility of the Commission.

In order to carry out more effectively the above purposes (in particular, purposes 1, 2, 4, and 6), the Commission has developed rules of procedure for investigations which are intended to assure to all parties in a conflict their individual rights of procedural fair process. The rules of procedure, presented in this document, have grown out of the above concerns of the Commission and of the NEA, and are presented in the hope that they will assist in furthering the services of the NEA to educators and to the public.

General Jurisdiction of the Commission in its Investigative Function

In determining the appropriateness of Commission entry into a matter, the following criteria may be considered:

1. The problem presented is of sufficent significance or precedential value to warrant its acceptance by the Commission.
2. The problem is susceptible to resolution through one of the various types of Commission investigations.
3. Although not susceptible to early resolution, the problem is of a scope and magnitude to justify PR&R investigation as a means of focusing national attention on the issues involved.
4. An impartial investigation is the best method of resolving the problem which cannot be be handled in a more expeditious manner or other type of action.
5. The problem is one that should not be handled by the local or state association, i.e., the state association is a party in interest.
6. There would be a conflict of interest if a local or state association conducted an investigation.
7. NEA-PR&R failure to give assistance in the case would mean that members of the profession would be deprived of due process without support from their professional association.

Classes of Investigations

A. Class I—Formal Investigations

Written Complaints have been filed with the Commission, followed by a preliminary inquiry into the Complaints which establishes a sound and factual basis on which a recommendation for or against a full-scale investigation can be made. The report of investigation may find that violative conduct did not take place or cannot be proven, or that violative conduct is proven and warrants some form of punitive action. The report will contain specific recommendations for resolution of the problem, together with a timetable for achieving resolution before additional action is taken. Resolution of a persevering problem ultimately may be secured only by support of a state sanction or by recommending imposition of a national sanction. A national sanction can be invoked only by the NEA Executive Committee following a comprehensive and objective investigation under the direction of an official agency, usually but not necessarily the Commission on Professional Rights and Responsibilities.

A Class I investigation may also result from a special study when such a study fails to produce the desired outcomes. The Class I investigation, in this instance, may be based on the fact determinations of the special study, supplemented by examination of recent fact developments and by whatever further inquiries are necessary to identify and bring an appropriate Complaint against the party or parties deemed responsible for failure to resolve the problem. Since this will not be an investigation *de novo*, it may be somewhat less extensive, requiring fewer special committee personnel than the usual Class I investigation. It should be noted, also, that an official request may not be required for these types of investigations.

B. Class II—Special Studies

No direct charges have been filed with the PR&R Commission. A non-complaining party may request the study. Possible objectives of the study are: to clarify the meaning or interpretation of a standard; to explore an obscure area to determine possible future action; to provide a factual or philosophical basis for the development of new NEA or PR&R policy or regulation. The Commission may act in these cases upon the request of NEA officials or other NEA units, or may assume original jurisdiction. Such studies may be undertaken in cooperation with other agencies, or may be conducted by Commission staff alone, by an appointed task force or study group, or by a consultant or consultants under contract to the Commission.

If a special study conducted to resolve a problem situation fails to produce the desired outcomes, the PR&R Commission or its Interim Committee may, upon request, authorize a formal, Class I investigation.

C. Class III—Staff Inquiry (Ethics Cases)

In preparation for an ethics hearing, evidence is needed to determine whether a Complaint of unethical conduct will be prosecuted against a member or members. The investigation has no direct punitive effect, although its findings, submitted in evidence to the hearing body, may result in a judgment unfavorable to the respondent member and consequent punitive action.

Definitions

1. *Commission*—The Commission on Professional Rights and Responsibilities of the National Education Association.
2. *Interim Committee*—That body of persons designated to act in behalf of the Commission when the Commission is not in session.
3. *Party*—A person, group of persons, organization, or organizations.
4. *Complainant*—That party by whom, or in whose behalf, a Complaint is filed.
5. *Respondent*—That party against whom the Complaint is made.
6. *Field Investigator*—That person designated by the Executive Secretary of the Commission to conduct the preliminary inquiry.
7. *Hearing Examiner*—That person designated by the Executive Secretary of the Commission to conduct the Hearing.
8. *Charge*—That document issued by the Commission against the respondent.
9. *Special Investigating Committee*—That body selected by the President of the National Education Association, and approved by the parties, to conduct the investigation on behalf of the Commission (hereinafter referred to as the "committee").

Class I–Formal Investigations

I. CRITERIA FOR A CLASS I INVESTIGATION

In determining the propriety of a Class I investigation, should the Commission assume jurisdiction, the following criteria may be considered:

1. A matter of more than local concern can be demonstrated.
2. The problem is susceptible to solution only through action at the national level.
3. Bilateral and third-party efforts to achieve solution have been exhausted or are shown to be inappropriate.
4. Local and state affiliates have exhausted all means of resolving the problem closest to its source.
5. Recourse through law or state administrative procedures is not possible or has been unsuccessful.
6. No pending litigation exists.
7. Respondents to the Complaint have the necessary authority to take corrective action.

II. THE COMPLAINT

A. Who May Initiate

Any person or persons, state or local affiliate, or any organization, whether or not affiliated with the National Education Association, claiming to be aggrieved by an alleged unfair practice or condition, or claiming to have been denied a professional right as an educator, may file a Complaint with the Commission on Professional Rights and Responsibilities of the National Education Association.

B. Form and Contents of the Complaint

1. The Complaint shall be in writing and signed.
2. A Complaint is neither intended to frame the issues nor to constitute proof. A Complaint is not invalid if it fails to particularize and specify each and every unfair practice with precision. However, the Complaint shall contain the following:
   (a) The full name, address, and telephone number of the person(s) or organization making the Complaint;
   (b) The full name, address, and telephone number, if known, of the respondent(s) and other parties;
   (c) A plain and concise statement of the facts alleged constituting the unfair practice or practices;
   (d) The alleged unfair practice and a statement of the particulars thereof, including but not limited to the date or dates of the alleged practice, and if the alleged practice is of a continuing nature, the dates between which said continuing acts are alleged to have occurred.
3. A statement as to any other action that has been instituted (whether organizational, civil, criminal, or administrative) in any other form, based on the same grievance or circumstances alleged in the Complaint, together with a statement as to the status or disposition of such other action, shall be included in the Complaint.

C. Filing

All Complaints shall be delivered personally or by mail to the Executive Secretary of the Commission, who may authorize a preliminary inquiry, and who must, in any event, submit to the Commission a copy of all Complaints received with a statement as to their disposition.

D. Time of Filing

Due to such contingencies as changes in fact situations and the unavailability of witnesses, a failure to make a timely filing may prejudice the Commission against accepting jurisdiction over the Complaint.

E. Amendment or Withdrawal of Complaint

A Complaint or any specifications thereof may be amended or withdrawn by the complainant at any time prior to the issuance of a formal Complaint by the Commission, and thereafter at the sole discretion of the Commission.

III. PRELIMINARY INQUIRY

A. Assignment of Investigator

After the filing of a Complaint, the Executive Secretary of the Commission may, in the exer-

cise of his discretion, assign one or more field investigators to review the Complaint.

B. Purpose

It shall be the obligation and responsibility of the field investigator(s) to make recommendations to the Commission or Interim Committee of the Commission regarding:

1. The appropriateness of the Commission's jurisdiction to investigate the Complaint;
2. The precise nature of the Complaint and specifications alleged therein;
3. The nature and extent of the evidence in support of the complainant's position, and whether a full investigation should be recommended;
4. The form of Hearing (see Section VII *post*);
5. The number of person(s) required to conduct a full and adequate investigation; and
6. The Perfected Complaint.

C. The Perfected Complaint

At the conclusion of the preliminary inquiry but prior to the submission by the field investigator of his recommendations to the Commission, the complainant, with the assistance of the field investigator, shall draft a Perfected Complaint, which will define more clearly and precisely the nature of the Complaint and specifications alleged therein. This Perfected Complaint, along with a copy of the "Rules of Procedure," then shall be forwarded to the respondent(s) for their answer (see Section IV *post*), over the name of the field investigator.

D. Recommendations to the Commission

The field investigator shall thereafter make his recommendations to the Commission in accordance with Paragraph C, *supra*, and will, in addition, submit a copy of the Perfected Complaint and the reply of the respondent(s), if any, thereto.

E. Dispensing with the Preliminary Inquiry

Where a Complaint raises matters upon which there is no factual dispute, (i.e., where a public record exists dealing with matters raised in the Complaint, where another agency has already issued a report on matters raised in the Complaint, and in other similar situations), the Executive Secretary, in the exercise of his discretion, may determine that the facts and circumstances surrounding the Complaint do not warrant the conduct of a preliminary inquiry or the issuance of a Perfected Complaint. In such cases, the Executive Secretary may request immediately the Commission or Interim Committee to authorize a Class I investigation based upon the Complaint received from the complainant, but including with any such request a statement setting forth the information required by Paragraph B of this section.

IV. THE ANSWER

A. Right to File

Upon receipt of the Perfected Complaint, the respondent(s) may exercise the right to file an Answer within five days.*

B. Place and Manner of Filing

The field investigator shall forward one copy of the Answer to the complainant(s) and one copy to the Commission at its office in Washington.

C. Form

Although no particular form is prescribed, the Answer should contain the name(s), address(es) and telephone number(s) of the respondent(s). The Answer should contain specific statements regarding any or all of the allegations in the Perfected Complaint, i.e., a denial, a statement as to mitigating circumstances, statements in support of an action. The respondent(s) are encouraged to include any additional facts and information which they deem relevant to the Complaint and which may be of assistance in the ultimate determination of the merits of the case.

D. Caveat

The above paragraph is not intended in any way to limit the respondent's right to present any additional information to the special investigating committee during the Hearing. It is intended, however, to encourage all parties to make available to the committee at the outset any and all information relevant to the Complaint.

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* In this regard, respondents who are members of the National Education Association are encouraged to keep in mind Principle III, Section 5 of the *Code of Ethics of the Education Profession* (July 1968), which provides that the educator "Shall not refuse to participate in a professional inquiry when requested by an appropriate professional association."

E. Dispensing with the Preliminary Inquiry

Where the Executive Secretary of the Commission has exercised his discretion under Section III (E) and dispensed with the preliminary inquiry and the Perfected Complaint, no Answer by the respondent(s) shall be necessary or required.

V. ACTION BY THE COMMISSION

A. Deliberation by the Commission

Within sixty days after the receipt of the Perfected Complaint, the Commission or Interim Committee shall be convened to determine whether or not a Class I investigation should be authorized.

B. Materials Before the Commission

In deciding upon a course of action, the Commission or Interim Committee shall be required to review the Perfected Complaint and any Answer received. In addition, the Commission or Interim Committee may review any additional material, not adversary in nature, which would tend to increase the general understanding of the Commission regarding the subject of the investigation.

C. Alternative Courses of Action

In deciding upon a course of action, the Commission may either:

(a) Refuse to authorize an investigation;

(b) Order further or a new preliminary inquiry;

(c) Recommend to the parties alternative approaches to the solution of the problem; or

(d) Authorize the investigation and issue a Commission Charge.

In any event, the Commission shall be required to notify all parties of its decision.

D. Action upon Authorization of Investigation

Upon authorizing a Class I investigation, the Commission or Interim Committee shall direct the Chairman of the Commission to issue a Commission Charge (see Section VI (E)).

The Commission or Interim Committee shall also direct the Executive Secretary of the Commission to:

(a) Notify the President of the National Education Association for the purpose of selecting the special investigating committee (see Section VIII); and

(b) Select a Hearing Examiner (see Section IX).

VI. THE COMMISSION CHARGE

A. Procedure

If, upon presentation of the report by the field investigator to the Commission or Interim Committee, it is determined by that body that the Complaint has merit and that it meets the jurisdictional requirements for a Commission investigation, the Commission or Interim Committee shall issue a Charge which will comply with the requirements set forth below.

B. Contents of the Charge

The Charge shall contain:

1. A clear and concise statement of the facts upon which jurisdiction by the Commission is predicated;
2. A clear and concise description of the acts which are claimed to constitute the alleged improper practices; and
3. A Notice of Hearing (see Paragraph F *infra*).

C. Limitations on the Charge

1. The Charge may include allegations not specifically enumerated in the Complaint where such allegations:
   (a) Merely elaborate the Complaint with particularity;
   (b) Are of the same nature or part of the continuing pattern of activity of the respondent;
   (c) Involve similar or related acts; or
   (d) Are fairly embraced within the general terms of the Complaint.
2. The Charge is IMPROPER if it alleges activity completely outside of the situation which gave rise to the Complaint.
3. A question of the propriety of a specification in the Charge shall, upon motion of the party raising the question, be brought before the

special investigating committee as soon as it is convened.

D. Amendment to the Charge

Upon motion by any party prior to the issuance of the Commission's report, the Commission may authorize an amending of the Charge.

E. Service of the Charge

The Chairman of the Commission shall cause to be issued and sent by registered mail in the name of the Commission a copy of the Charge, together with a written Notice of Hearing and a copy of the Investigation Procedures, to all named parties. In those instances where the Charge is issued against no particular named respondent, a copy of the Charge and Notice of Hearing shall be served on the administrative or political head of the appropriate political subdivision.

F. Notice of Hearing

The Notice of Hearing shall contain:

1. The name of the Hearing Examiner who shall conduct such Hearing, or in lieu thereof, a statement that a Hearing will be conducted by a Hearing Examiner to be designated subsequently by the Commission;
2. The date of the Hearing, which (unless otherwise provided by the Commission or Interim Committee) shall not be less than twenty nor more than ninety days after issuance and service of the Charge;
3. The place of Hearing, which shall be of a neutral character and at a place reasonably convenient for the parties;
4. A list of names of the members of the special investigating committee (see Section VIII *post*);
5. A statement requesting the respondent(s) to:
   (a) Acknowledge receipt of the Commission Charge and Notice of Hearing;
   (b) State whether or not he will be present at the Hearing;
   (c) State whether he will require an adjustment of the time and place of the Hearing; and
   (d) Furnish the Commission with a list of witnesses he intends to have called;
6. A statement describing the form of Hearing and appropriate procedure.

VII. FORM OF HEARING

The field investigator shall determine and recommend the form of Hearing best designed to insure both procedural due process and exhaustive and comprehensive exposure of all of the facts relevant to the Complaint and the Charge. He may select:

A. Full Public Hearing

This form of Hearing makes provisions for the presence of all parties throughout the Hearing and for the admission of the public into the Hearing room. Its design specifically incorporates procedural safeguards insuring due process, and accordingly, field investigators are encouraged to recommend this type of Hearing where circumstances will permit. Use of this form of Hearing, and all other forms listed below, places the responsibility for examining all witnesses solely upon the Hearing Examiner and the members of the committee, with the right of cross-examination reserved to counsel. In the event any party selects to be represented by legal counsel, the role of said counsel will be limited to advising his client as to his rights, to making motions regarding the nature and conduct of the questioning and the procedures followed during the Hearing, and to cross-examining witnesses. The exercise of the right of cross-examination is, however, discretionary, and is in any event limited to the scope of the direct. As defined in Paragraph D, Section IX, rulings of the Hearing Examiner on all motions and objections made during the Hearing shall be final, subject to review and reversal by the Committee. Considering, however, the nature of some problems and their need to be handled in a less formal and more flexible manner, the field investigator may recommend to the Commission the use of either of the two following forms of Hearing where his recommendation is accompanied by a full explanation in support of his choice.

B. Full Hearing Closed to the Public

This form of Hearing, similar in most respects to the Full Public Hearing, differs in the fact that the public and all other parties unnecessary to the conduct of the Hearing are excluded, except witnesses, who may or may not be excluded, at the discretion of the Hearing Examiner.

C. Sequential Hearing

The purpose behind this form of Hearing is to provide the parties with an opportunity to

confront all the issues and at the same time allow for the protection of the identities of testifying witnesses, should such a need arise. Being the most flexible form, but the one least likely to insure complete accuracy in testimony, this form of Hearing should be recommended only where the field investigator determines that any other form would severely restrict the ability of the special investigating committee in the fulfillment of its job. This form excludes all parties except the party calling the witness to give testimony. The committee, therefore, shall be obligated to advise all parties not present of all relevant evidence taken in their absence, either during or after the Hearing, particularly that evidence of an accusatory nature. The party not present during the presentation of this evidence will have an opportunity at a later time to introduce evidence and present testimony to refute that given in his absence. In the event testimony is to be taken at multiple sites by individual members of the committee, those members are restricted to merely receiving and transmitting said testimony to the committee as a whole.

VIII. SELECTION OF THE SPECIAL INVESTIGATING COMMITTEE

For the purpose of insuring broad representation and complete impartiality in the composition of the committee, committeemen on the special investigating committee shall be selected in the following manner:

A. Notice to President

For each investigation authorized by the Commission or Interim Committee, the Executive Secretary of the Commission shall transmit a notice of same to the President of the National Education Association. Said notice shall include a statement indicating the nature and scope of the investigation and the approved recommendation of the field investigator regarding the suggested number of members of the special investigating committee.

B. Inclusion of One Member of Commission

In compliance with the *Handbook of Purposes, Policies and Practices for the Members and Staff of the Commission on Professional Rights and Responsibilities*, VI, (4), the Executive Secretary of the Commission shall be responsible for the selection of ONE member of the Commission, whose name shall be included automatically in the final list of members of the special investigating committee.

C. Selection of Candidates

Upon receipt of the above notice, the President shall cause to be selected a committee chosen from such categories as:

(a) the Commission (see Section B above);

(b) public officials;

(c) school administrators; and

(d) classroom teachers.

Certain special classifications of persons may appear on the committee, depending on the particular nature of the issue involved, e.g., school business and finance specialists, school personnel specialists.

D. Accompanying Information

Accompanying the name of each committeeman selected by the President, there shall be included the address of said committeeman, the name and address of his employer, and a description of the position the committeeman holds.

E. Action by Parties

1. Upon receipt by the parties of the Commission Charge, the parties may, within forty-eight hours, file with the President of the National Education Association written objections to the inclusion of any committeeman on the special investigating committee. Any such objection filed should include a statement as to the specific reasons for such an objection.
2. The President of the National Education Association, in the exercise of his discretion, may strike the name of any objectionable committeeman from the list and select a replacement.

F. Limitation on Membership

No person, except for members of the Commission, having previously served on a Commission investigation in any capacity within two years, shall have his name considered as a committeeman, nor shall any member of the National Education Association staff act as a voting member of the special investigating committee.

G. Committee Organization

After being brought together, the committee shall, in due course, elect a Chairman. It shall be within the authority of the Chairman to select, where necessary, *ad hoc* committees to act with powers not to exceed those delegated to the special investigating committee.

H. Distribution to Committee

The Hearing Examiner shall, upon his appointment, forward to the members of the committee copies of the following documents:

(a) The Perfected Complaint;

(b) Respondent's Answer;

(c) The Commission Charge;

(d) Any additional material, not adversary in nature, which would tend to increase the general understanding of the committee regarding the subject of the investigation.

IX. THE HEARING

A. Who Shall Conduct

Upon issuance of the Charge by the Commission, the Executive Secretary of the Commission shall designate immediately a person to serve as Hearing Examiner and such additional persons as are deemed necessary to assist in the performance of administrative duties. No person previously involved in the preliminary inquiry, conciliation proceedings between the parties, or the issuance of a Charge and Notice of Hearing, shall act as Hearing Examiner in such case.

B. Form of Hearing (see Section VII, *supra*)

1. *Restriction of Form of Hearing*

   Except under the most unusual circumstances, the Hearing Examiner shall be bound to conduct the Hearing in the form and manner recommended by the field investigator, as approved or amended by the Commission.

2. *Departure*

   Where the need for departure from the prescribed form of Hearing develops either before or during the course of the Hearing, the Hearing Examiner shall issue a notice of his intent to depart from the prescribed form to all parties no later than three days prior to the commencement of the scheduled Hearing, or as soon as possible after such a determination is made. Objection to said departure may be made by any party in writing to the Hearing Examiner. While the Hearing Examiner retains the right to alter the form of Hearing, he is required to meet any objections by the parties with a written explanation of his actions. Should the objecting party deem his explanation to be unsatisfactory, said party may file a formal objection directly with the Commission in Washington. At the conclusion of the Hearings, the Commission or Interim Committee will consider any formal objection made regarding the Hearing Examiner's deviation from the prescribed form of Hearing. Should it be determined that the Hearing Examiner's action was inappropriate, unwarranted, or unjustified and prejudicial, the Commission or Interim Committee shall have the authority to declare any or all findings made by the special investigating committee invalid, inadmissible, and improper evidence upon which to base the final report of the committee.

C. Duties of Hearing Examiner

1. Evidence in support of and in defense of the Commission Charge shall be presented before the Hearing Examiner.
2. The Hearing Examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity.
3. The Hearing Examiner shall have full authority to control the procedures of the Hearing, to admit or exclude testimony or other evidence in his discretion, whether or not admissible in a court, to admit or exclude, in his discretion, witnesses in the Hearing room, and to rule any and all motions and objections.
4. The Hearing Examiner, on motion of a party or on his own motion, may call and examine witnesses and introduce documentary or other evidence.
5. As stated in Section VII, "Form of Hearing," the Hearing Examiner and the members of the committee shall be responsible for examining all witnesses, with the right of cross-examination reserved to counsel. In the event any party selects to be represented by legal counsel, the role of said counsel will be limited to advising his client as to his rights, to making motions regarding the nature and conduct of the questioning and the procedures followed during the Hearing, and to cross-examining witnesses. The exercise of

the right of cross-examination is, however, discretionary, and is, in any event, limited to the scope of the direct.

6. The Hearing Examiner shall have the power to entertain motions by any party or member of the special investigating committee to amend the Commission Charge.

D. Rulings by Hearing Examiner and Reversal by Committee

The ruling of the Hearing Examiner on all motions, including any objections to the introduction of evidence or to any aspect of the proceedings, shall be final, subject to review by the committee. Should a member or members of the committee disagree with a ruling of the Hearing Examiner, said member(s) may move that the committee adjourn to discuss said ruling. If the motion is approved by a majority of the members of the committee, the committee as a whole shall then withdraw and in closed session discuss and resolve any conflict between its position and that of the Hearing Examiner. Such resolution shall be announced thereafter by the Chairman in open session, and the Hearing Examiner shall be bound by such resolution of the committee.

E. Record of Proceedings

The Hearing Examiner will insure that an electronic recording and a written summary statement of the evidence received from each witness is maintained.

F. Scope of Hearing

It shall be the obligation and responsibility of the Hearing Examiner to limit the scope of the investigation and the admission of all evidence to that area of inquiry directly relating to matters raised in the Commission Charge. The hearing of testimony and the pursuance of matters outside the scope of the Charge shall be declared irrelevant and improper as a foundation upon which the special investigating committee may base its report.

G. Introductory Statement to Witness

Before giving testimony, each witness shall be informed of the membership of the special investigating committee, of the identity of the primary parties or their representatives, of the fact that all testimony is being recorded, and of his right to request that testimony given by him be kept confidential.

H. Opening Statement by Witness

Each witness planning to testify is encouraged to prepare an opening statement to be delivered during the Hearing to the committee, which will deal with matters directly relating to issues under investigation by the committee. Thereafter, it shall be the responsibility of the Hearing Examiner to indicate to the witness which of the matters raised in the opening statement are relevant to the investigation, and to pursue through questioning areas of interest to the special investigating committee.

I. Questioning by the Committee

The members of the committee retain the right to examine any witness offering testimony, to examine any and all documents submitted by way of evidence, to call additional witnesses, and to deal generally with all matters properly within the scope of the Commission Charge.

J. Private Communication

When a Closed or Sequential Hearing form is used, it shall be the responsibility of the Hearing Examiner to inform all parties and their agents, members of the special investigating committee, and all witnesses, that matters discussed and testimony elicited during the Hearing is confidential in nature. It shall be the responsibility of every person present at the Hearing to maintain this confidence and to refrain from discussing any matter relating directly or indirectly to the conduct of the Hearing with any other person. No papers, formal documents, statements, or summaries of witnesses' testimony, or any other matter may be transmitted by any person to any party, member of the committee, or persons outside the Hearing without the express permission of the Hearing Examiner.

K. Direct Communication with Parties

Outside the Hearing room, all persons, including members of the committee, but excluding the Hearing Examiner, are prohibited from communicating directly or indirectly with any of the parties regarding matters within the scope of the investigation. The Hearing Examiner, while retaining the right to engage in such *ex-parte* discussion, is advised on such occasions to file a written statement summarizing the nature of the *ex-parte* discussion with a party not present.

L. Stipulations by Parties

The Chairman of the special investigating committee, with the assistance of the Hearing

Examiner, may call representatives of the parties together for the purpose of reaching agreements on such matters as placing a limitation on the number of witnesses to be used, and stipulating as to any factual matters which may be raised during the course of the Hearing. Should it appear that the parties are unable to reach agreement on matters of procedure, the Chairman is authorized to decide the matter unilaterally, and to accept written objections from parties in disagreement with his decision.

M. Settlements

1. *Proposal*

   At any time prior to the Commission's issuance of its final report, any party to the investigation may propose to the Hearing Examiner a settlement agreement. Copies of said proposed settlement agreement will be served on all other parties by the moving party. Upon receipt of the proposed settlement agreement, the Hearing Examiner will solicit from all parties recommendations regarding its adoption.

2. *Agreement and Recommendation*

   Should all parties agree to accept the settlement, a copy of the proposed settlement agreement, signed by all parties or their authorized agents, shall be submitted to the special investigating committee. The committee will consider the settlement agreement, enter a recommendation thereon, and forward the settlement agreement with its recommendation to the Commission or Interim Committee in Washington, for final aproval.

3. *Suspension of Hearings*

   During the time between the acceptance by all parties of the settlement agreement and a ruling by the Commission, all Hearings and the taking of testimony shall be temporarily suspended. Only the Commission has the authority to terminate formally all investigations and accept as final the settlement agreement.

4. *Action by Commission*

   If, after consideration, the Commission or Interim Committee approves the proposed settlement agreement, the Executive Secretary of the Commission shall cause the appropriate notice to be issued to all persons concerned and terminate the Hearing. If, however, the agreement is rejected by the Commission or Interim Committee, the Hearing Examiner will be directed to proceed with the Hearing.

N. Opening and Closing Statements by Parties

At the commencement of the Hearing, each party, either in person or by counsel, shall have the opportunity to present both a written and an oral opening statement, which may summarize that party's position and evidence to be introduced. At the conclusion of the Hearing, each party shall have the opportunity to present both a written and an oral closing statement, which may include a summary of the evidence and testimony received. The Hearing Examiner shall reserve fifteen minutes per party at the beginning and the end of the Hearing, during which time oral statements may be received.

O. Use of Previously Issued Reports

Where a report or document dealing in whole or in part with matters raised by the Complaint and Commission Charge has been previously issued by an agency, organization, or individual other than the National Education Association, and where the special investigating committee has established the accuracy, authenticity, and materiality of such report or document, then the special investigating committee shall be authorized to base its findings and resolutions upon such a record, where reasonable, without the need for additional formal hearings or the taking of testimony.

X. DRAFT OF THE REPORT

A. Tentative Report

1. *Preparation and Contents*

   The special investigating committee, together with its assigned writer, shall prepare a tentative draft report of its findings. The aforementioned draft will include:

   (a) A copy of the Complaint;

   (b) A copy of the Perfected Complaint;

   (c) A copy of the respondent's Answer;

   (d) A statement of the facts surrounding the situation;

   (e) A copy of the Commission Charge;

   (f) A statement of the committee's findings; and

(g) A statement of conclusions and recommendations.

2. *Minority View*

Should the committee be unable to develop a unanimous statement, the committee is authorized to include in its tentative draft report a separate section which clearly enunciates the position of the minority.

B. Submission to Parties

After the special investigating committee has approved the tentative draft report, unofficial confidential copies of said report will be served on all parties.

C. Objection by Parties

1. *Right to File Objection*

Any party, after receiving and considering the tentative draft report of the special investigating committee, may file an objection thereto with the Hearing Examiner. Where the Executive Secretary of the Commission has exercised his discretion under Section III (E) and dispensed with the preliminary inquiry and the Perfected Complaint, the parties, while retaining the right to file objections to the tentative draft report, must serve notice upon the Commission of their intention to do so within twenty-four hours after the receipt of said tentative draft. Said parties shall thereafter have an additional four days in which to file any such objections. A failure to tender the 24 hour notice may be deemed to be a waiver of the right to file such objections.

2. *Manner of Objection*

(a) *Time*—All objections to the tentative draft report will be filed with the Hearing Examiner within ten days after receipt, unless otherwise provided.

(b) *Form*—All objections shall be in writing and shall direct themselves to specifically designated sections of the tentative draft report. Each objection shall be accompanied by reasons and facts in support of said objection and shall include a suggested revision.

3. *Failure to Object*

The failure of any party to object within the specified period may be deemed by the committee to be an acceptance *per se* of the tentative draft by said party.

D. Submission to Counsel and Reply

After approval by the committee of its tentative draft report, said committee shall submit to NEA Corporate Counsel an official confidential copy of same, plus objections, if any. Corporate Counsel shall review the draft and forward to the special investigating committee within five days any recommendations or criticisms regarding the substance and/or form of the report.

E. Reconsideration by the Committee

Upon the expiration of the ten days (or as otherwise provided under Paragraph C (2)(a) *supra*), the committee shall reconsider its tentative draft report in the light of any replies or recommendations received. At this juncture, the committee is authorized to reconvene the Hearing for the express purpose of pursuing any matters yet remaining unclear or for exploring any new questions raised by any objections received.

F. Submission of Tentative Draft Report to Commission

After a rehearing or reconsideration of any remaining points, the committee shall redraft any portion of its tentative draft in accordance with the wishes of the majority. The dissent of any member(s) of the committee will be noted in a section of the report specifically designated for that purpose. The report, including a statement of any objections or recommendations received and the disposition thereof, and a statement of any minority view, then shall be mailed to all members of the Commission for their consideration. The report submitted to the Commission shall be designated as the final draft.

XI. PROCEDURE FOR ADOPTION OF FINAL DRAFT BY COMMISSION

A. Consideration for Approval

Upon receipt by the Commission of the final draft report of the special investigating committee, said report, including a statement of any objections made by any party or the Corporate Counsel and the disposition thereof, and a statement of any minority view, will be distributed among members of the Commission, who will be asked to respond by means of approval or specific criticisms of portions of the report.

B. Majority Objections to Final Draft

If a majority of the members of the Commission object to a particular portion of the final draft, resolution of such disagreements shall be effected through a joint meeting of the Interim Committee and an *ad hoc* committee appointed by the Chairman of the special investigating committee.

C. Minority Objections to Final Draft

1. If a minority of the members of the Commission file in writing an objection to a particular portion(s) of the final draft on their ballot, and include a statement in support of their objection, the Executive Secretary of the Commission shall have the discretion to either:
   (a) Reject the objection of the minority; or
   (b) Incorporate the minority view into the draft.
2. Regardless of his decision, the Executive Secretary shall notify both the Interim Committee and the individual dissenting member(s) of said action.
3. The decision of the Executive Secretary regarding the disposition of minority objections is subject to approval by the special investigating committee and review by the Interim Committee.

D. Resolution of Disagreements

1. In any case where disagreement between the majority of the Commission and the special investigating committee or its *ad hoc* committee cannot be resolved through a joint meeting, and an impasse is threatened, the following courses of action are available to the Interim Committee:
   (a) It may request the special investigating committee to further investigate the particular area of disagreement; or
   (b) It may cause to be formed a new special investigating committee, to further investigate the particular area of disagreement.
2. The Commission has no power to issue a statement or report on its own behalf, but rather is limited to authorizing the report of a special investigating committee.

E. Confidential Nature of Report

At no time prior to the Commission's formal adoption and release of the report shall any portion of said report be made public or be distributed to any persons other than those parties as named on the formal Complaint. Commission on Professional Rights and Responsibilities staff or Corporate Counsel copies of the tentative draft report and the final draft report are distributed to parties on a *confidential basis only*.

Class II Investigations - Special Studies

I. CRITERIA FOR A CLASS II SPECIAL STUDY

A. The report issued as a result of a Class II special study shall not have a punitive or derogatory effect on identifiable person(s), agencies, or organizations.

B. The matter studied must be relevant to the purposes of the NEA and the Commission.

C. The matter should not be one that could be dealt with better or more appropriately by another NEA unit or affiliate organization.

II. THE REQUEST

A. Who May Initiate

Any person(s), state or local affiliate, or any organization, whether or not affiliated with the National Education Association, may request the Commission on Professional Rights and Responsibilities of the National Education Association to conduct a special study.

B. Form and Contents of the Request

1. The request shall be in writing and signed.
2. The request shall contain the following:
   (a) The full name, address, and telephone number of the person(s) or organization making the request;
   (b) The full name, address, and telephone number of any other relevant parties;
   (c) A plain and concise statement of the facts alleged constituting the basis for the request, and the areas the requesting party wishes to be examined.
3. A statement as to any previous or pending organizational, administrative, or legal action taken which relates directly or indirectly to the areas sought to be examined, shall be included.

C. Filing

A request shall be delivered to the Commission personally or by mail.

D. Time of Filing

A failure to make a timely filing may prejudice the Commission against accepting jurisdiction over the request.

E. Disposition of Request

The request filed with the Commission shall be forwarded to the Executive Secretary of the Commission, who shall take such steps as are necessary to further and more fully inform himself and the Commission of the nature of said request. The Executive Secretary shall thereafter cause to be presented to the Commission a recommendation as to whether or not Authorization for a special study should be issued, along with a written statement in support of the aforementioned recommendation.

III. AUTHORIZATION FROM THE COMMISSION

A. Procedure

If, upon presentation of the recommendation to the Commission or Interim Committee, it is determined by that body that the request has merit and that it meets the jurisdictional requirements for a Commission Class II special study, the Commission or Interim Committee shall issue an Authorization for the special study, which will comply with the requirements set forth below.

B. Contents of Authorization

The Authorization shall contain:

1. A clear and concise statement of the facts upon which the Commission's jurisdiction is predicated; and
2. A clear and concise description of the area of inquiry and the issues to be examined.

C. Service of Authorization

The Chairman of the Commission shall cause to be issued and sent by registered mail, in the name of the Commission, a copy of the Authorization to the initiating parties, with additional copies distributed in the discretion of the Executive Secretary of the Commission.

D. Amendment of Authorization

The party requesting the special study or the committee may, at any time prior to the issuance of the report, request the Commission to amend its original Authorization.

IV. THE SPECIAL STUDY

A. Selection of the Committee

Upon receipt of the Authorization from the Commission, the Executive Secretary of the Commission shall appoint a committee or person to conduct a special study as authorized by the Commission.

B. Conduct of the Study

The committee shall conduct a study and shall prepare a report for submission to the Commission for its consideration. The Commission shall thereafter either reject or recommend amendment, and/or approve the report, and within its discretion, direct either the public or private dissemination of the aforementioned report.

Class III Investigations – Staff Inquiry (Ethics Cases)

I. RECEIPT OF A COMPLAINT OF ETHICAL VIOLATION

A. Who May Complain

Any person or persons, professional or lay, whether or not affiliated with the National Education Association, may initiate a Complaint of a violation of the *Code of Ethics of the Education Profession* by a member of the National Education Association.

B. Referral to the Associate Secretary for Ethics

Any staff member, officer, Commission member, or committee member of the National Education Association shall refer any Complaint of an ethics violation, where action by the NEA is being requested, to the Associate Secretary for Ethics of the Commission on Professional Rights and Responsibilities. The Associate Secretary for Ethics shall:

1. Determine whether the alleged fact situation complained about, if later found to be true, involves an action contrary to a specific section of the *Code of Ethics of the Education Profession*. Appeals from this decision may be raised directly with the Committee on Professional Ethics;
2. Determine whether the NEA Ethics Committee appears to have jurisdiction over the matter. In so doing, he shall determine the viewpoints of appropriate state and local associations concerning jurisdiction in the case. Jurisdiction shall be established on the basis of the procedures outlined in the publication, *Enforcement of the Code of Ethics of the Education Profession*, Section I-D, and shall be vested in the NEA Ethics Committee under any of the following conditions:
   (a) In controversies between two or more state associations or their members;
   (b) In Complaints, or on its own motion, to which the National Education Association is a party;
   (c) In Complaints that cannot be resolved satisfactorily at the local or state level and that are of national concern;
   (d) Upon request of or with the consent of an affiliated state association.

II. ASSIGNMENT OF AN INVESTIGATOR

Where a *prima facie* case is established in a Complaint of Code violation and the NEA Ethics Committee appears to have jurisdiction, the Associate Secretary for Ethics will submit the case to the Executive Secretary of the National Commission on Professional Rights and Responsibilities for the assignment of one or more field investigators to investigate the Complaint. The staff contact for Ethics shall designate the person(s) to whom the report of the field investigator shall be directed. The report may be directed to the Commission on Professional Rights and Responsibilities, its Interim Committee, or a member of the Ethics Committee appointed by the Ethics Committee Chairman.

III. ACTION TO BE TAKEN DURING THE INVESTIGATION

In the course of his inquiry, the field investigator shall:

A. Communicate with the complainant to define more clearly and precisely the Complaint, when necessary, and the specifications upon which it is based. He shall assist the complainant with the drafting of a Perfected Complaint;

B. Furnish to the respondent educator a statement of the Perfected Complaint, and allow a reasonable time for him to answer;

C. Conduct such other correspondence or on-site investigation as may be necessary to fulfill the purpose of the investigation.

IV. REPORT OF THE FIELD INVESTIGATOR

The field investigator shall prepare a report of his findings to be submitted as designated above. Once the report has been submitted, the designation of person(s) to receive it shall not be altered. The report shall include the findings and recommendations of the field investigator regarding:

A. The jurisdiction of the NEA Ethics Committee, in accordance with guidelines in *Enforcement of the Code of Ethics of the Education*

Profession, to adjudicate charges which might be drawn upon this Complaint;

B. The specifications upon which the Complaint is based, and the provisions of the *Code of Ethics of the Education Profession* which relate to that action;

C. Evidence in support of both the complainant's and the respondent's position, including the respondent's answer, if any, to the Perfected Complaint;

D. The advisability of the Commission on Professional Rights and Responsibilities, its Interim Committee, or the designated member of the Ethics Committee drawing a Charge against the respondent based upon this Complaint. If the investigator recommends that a Charge be drawn, he shall prepare a draft of a possible Charge to accompany the recommendation.

V. STATEMENT OF CHARGES

The Commission on Professional Rights and Responsibilities, or its Interim Committee, or the designated member of the Ethics Committee, upon receipt of the report of the field investigator, shall be responsible for determining whether a probable cause for action has been demonstrated, and for the drawing of a Statement of Charges if it is deemed appropriate. A Statement of Charges shall allege in writing the specifications upon which the Charge is based and shall refer to a particular provision of the *Code of Ethics of the Education Profession.*

VI. ADJUDICATION OF THE CASE

When the Commission on Professional Rights and Responsibilities, its Interim Committee, or a designated member of the Ethics Committee has brought Charges of an ethics violation against an Association member, legal counsel of the Commission on Professional Rights and Responsibilities or other appointee shall serve as the prosecutor of the case. The Committee on Professional Ethics shall be responsible for the adjudication of the case in accordance with the procedures outlined in *Enforcement of the Code of Ethics of the Education Profession.* The Ethics Committee may render a decision on the basis of available information; however, if either the Ethics Committee or the respondent deems a Hearing to be necessary, the Chairman of the Ethics Committee shall cause a Hearing to be conducted prior to the rendering of a decision.

VII. DECISION

The Committee on Professional Ethics may acquit the accused Association member or may find him guilty of a violation of the *Code of Ethics of the Education Profession.* Upon a finding of guilt, the Ethics Committee may censure, suspend, or expel the guilty party from NEA membership. Any party to the proceedings may appeal the decision of the Ethics Committee on the basis of procedural error to the NEA Executive Committee. Any proposed discipline or publicity about the decision shall be withheld until such decision has become final.